

## **Item LEG05-03 Response Form**

**Title:** Clarification of Motion Fees (amend Government Code section 26830)

- ☐ Agree with proposed changes
- ☐ Agree with proposed changes **if modified**
- ☐ Do not agree with proposed changes

Comments: \_\_\_\_\_

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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Please write or fax or respond using the Internet to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

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| <b>DEADLINE FOR COMMENT: 5:00 p.m. Friday, June 20, 2005</b> |
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (LEG05-03)

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| Title      | <b>Clarification of Motion Fees</b> (amend Government Code section 26830)  |
| Summary    | The proposed amendment would authorize the Judicial Council to adopt rules to clarify the application of the motion fees under Government Code section 26830. It would also clarify that the fee authorized in small claims matters under subdivision (c) is a fee for a motion to vacate under Code of Civil Procedure section 116.745.   |
| Source     | Civil and Small Claims Advisory Committee  |
| Staff      | Janet Grove, Attorney, Office of the General Counsel, 415-865-7702, janet.grove@jud.ca.gov<br>Patrick O'Donnell, Committee Counsel, Office of the General Counsel, 415-865-7665, patrick.o'donnell@jud.ca.gov  |
| Discussion | <p>As it now reads, the motion fee statute is subject to various interpretations. In 2003, subdivision (f) was added to section 26830: "Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a) [motions], (b) [motion for summary judgment], (c) [motion in small claims case], and (d) [motion or stipulation for continuance of trial] apply separately to each motion or other paper filed." At present, different courts take different approaches to counting the number of "motions or other papers" filed, particularly when multiple motions are filed under subdivision (a).</p> <p>Some courts count the number of "papers" (or documents) filed. This approach is subject to manipulation when numerous motions are listed on one pleading. Some courts instead count the number of motions listed on the pleadings. The number of "motions," however, may also be subject to manipulation. Moreover, the number of "motions" may not always be clear to court clerks. A similar problem arises if more than one party in a case makes the same motion. Some courts require each party to pay the motion fee and some charge one collective motion fee.</p> |

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|  | <p>Clarification of how many motion fees should be charged in various circumstances would be helpful to courts and litigants. However, the committee found no straightforward and unambiguous way to clarify the application of the fee in legislative language. Therefore, the proposed amendment would authorize the Judicial Council to adopt rules that would describe in detail how the fee should be applied, giving guidance to the courts for a consistent application.</p> <p>The proposal also would amend the provision in subdivision (c) for a motion fee in small claims matters for consistency with the Small Claims Act. The only motion fee authorized in the Small Claims Act is the motion to vacate under Code of Civil Procedure section 116.745.</p> <p>A copy of the proposed amendments is attached.</p> |
|  | Attachments   |

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Government Code section 26830 would be amended to read:

**§ 26830. Motions requiring hearing; notice of intention to move for new trial; renewals of judgment; exceptions; summary judgment; small claims court**

<Text of section operative until July 1, 2006.>

(a) Except as provided in subdivisions (b), (c), and (d), the fee for filing any notice of motion, or any other paper requiring a hearing subsequent to the first paper, or any notice of intention to move for a new trial of any civil action or special proceeding, or an application for renewal of a judgment, is thirty-three dollars (\$33).

However, there shall be no fee for filing any of the following:

- (1) An amended notice of motion.
- (2) A civil case management statement.
- (3) A hearing on a petition for emancipation of a minor.
- (4) Default hearings.
- (5) A show-cause hearing on a petition for an injunction prohibiting harassment.
- (6) A show-cause hearing on an application for an order prohibiting domestic violence.
- (7) A show-cause hearing on writs of review, mandate, or prohibition.
- (8) A show-cause hearing on a petition for a change of name.
- (9) A hearing to compromise a claim of a minor or an insane or incompetent person.

(b) The fee for filing a motion for summary judgment or summary adjudication of issues is one hundred fifty dollars (\$150).

(c) The fee authorized in the Small Claims Act for the filing of ~~any~~ a motion to vacate in a small claims court ~~matters~~ matter is fourteen dollars (\$14), which shall be deposited in the county general fund for use as county general fund revenue.

(d) If a continuance is granted, in addition to the notice of motion fee required under subdivision (a), a fee of one hundred dollars (\$100) shall be collected for filing a motion or a stipulation for continuance of a trial, or requesting a continuance for trial orally, which shall be deposited in a special account in the county treasury and

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transmitted there from monthly to the Controller for deposit in the Trial Court Trust Fund.

(e) Notwithstanding Section 68085, fourteen dollars (\$14) of the thirty-three dollar (\$33) fee authorized in subdivision (a) and one hundred dollars (\$100) of the one hundred fifty dollar (\$150) fee established by subdivision (b) shall be deposited in the county general fund for use as county general fund revenue. The balance of the fees collected shall all be deposited in a special account in the county treasury and transmitted there from monthly to the Controller for deposit in the Trial Court Trust Fund.

(f) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a), (b), (c), and (d) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

(g) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

**§ 26830. Notice of motion, or any other paper, requiring a hearing; notice of motion for new trial; applications for renewal of judgment; motion for summary judgment or summary adjudication of issues; small claims court motions; continuances**  
<Text of section operative July 1, 2006.>

(a) Except as provided in subdivisions (b) and (c), the fee for filing any notice of motion, or any other paper requiring a hearing subsequent to the first paper, or any notice of intention to move for a new trial of any civil action or special proceeding, or an application for renewal of a judgment, is thirty-three dollars (\$33).

However, there shall be no fee for filing any of the following:

- (1) An amended notice of motion.
- (2) A civil case management statement.
- (3) A hearing on a petition for emancipation of a minor.
- (4) Default hearings.
- (5) A show-cause hearing on a petition for an injunction prohibiting harassment.
- (6) A show-cause hearing on an application for an order prohibiting domestic violence.
- (7) A show-cause hearing on writs of review, mandate, or prohibition.

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(8) A show-cause hearing on a petition for a change of name.

(9) A hearing to compromise a claim of a minor or an insane or incompetent person.

(b) The fee for filing a motion for summary judgment or summary adjudication of issues is one hundred dollars (\$100).

(c) The fee authorized in the Small Claims Act for the filing of ~~any~~ a motion to vacate in a small claims court ~~matters~~ matter is fourteen dollars (\$14), which shall be deposited in the county general fund for use as county general fund revenue.

(d) Notwithstanding Section 68085, fourteen dollars (\$14) of the thirty-three dollar (\$33) fee authorized in subdivision (a) and the one hundred dollar (\$100) fee established by subdivision (b) shall be deposited in the county general fund for use as county general fund revenue. The balance of the fees collected shall all be deposited in a special account in the county treasury and transmitted there from monthly to the Controller for deposit in the Trial Court Trust Fund.

(e) Regardless of whether each motion or matter is heard at a single hearing or at separate hearings, the filing fees required by subdivisions (a), (b), and (c) apply separately to each motion or other paper filed. The Judicial Council may publish rules to give uniform guidance to courts in applying fees under this section.

(f) This section shall become operative July 1, 2006